

C V 10 1460 JL

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (CAND Rev 1/10)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS Souheil Sawaya	DEFENDANTS Wells Fargo Bank, N.A.
(b) County of Residence of First Listed Plaintiff San Diego County, CA (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Kevin J. McInerney, SBN 46941 (775) 849-3811 McInerney & Jones (775) 849-3866 fax 18124 Wedge Parkway #503 Reno, NV 89511	Attorneys (If Known) Lindbergh Porter, SBN 100091 (415) 433-1940 Littler Mendelson P.C. (415) 399-8490 fax 650 California Street, 20th Floor San Francisco, CA 94108

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																																
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2"></th> <th>PTF</th> <th>DEF</th> <th colspan="2"></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>			PTF	DEF			PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)																		
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	REAL PROPERTY													
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>PERSONAL INJURY</th> <th>PERSONAL INJURY</th> </tr> <tr> <td> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td> <input type="checkbox"/> 362 Personal Injury—Med. 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			<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<th>SOCIAL SECURITY</th> <td></td>	SOCIAL SECURITY													
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			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <th>FEDERAL TAX SUITS</th>	FEDERAL TAX SUITS													
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609														

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Judge from Magistrate Judgment	<input type="checkbox"/> 8 Appeal to District

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. Section 207 Brief description of cause: FLSA and California Overtime Claim
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ in excess of \$75,000	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". Mevorah v. Wells Fargo; In re Wells Fargo HMC Overtime Lit., MDL 06-1770MHP
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IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE <input type="checkbox"/> EUREKA
DATE April 5, 2010	SIGNATURE OF ATTORNEY OF RECORD

E-filing **FILED**
APR -6 P 3:31
RICHARD W. WILKINS
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Kevin J. McInerney, Esq. (46941)
kevin@mcinerneylaw.net
Kelly McInerney, Esq. (200017)
kelly@mcinerneylaw.net
Charles A. Jones, Esq. (224915)
caj@mcinerneylaw.net
MCINERNEY & JONES
18124 Wedge Parkway #503
Reno, NV 89511
Telephone: (775) 849-3811
Facsimile: (775) 849-3866

James F. Clapp, Esq. (145814)
jclapp@sdlaw.com
Marita Murphy Lauinger, Esq. (199242)
mlauinger@sdlaw.com
Zachariah P. Dostart, Esq. (255071)
zdostart@sdlaw.com
DOSTART CLAPP GORDON & COVENEY, LLP
4370 La Jolla Village Drive, Suite 970
San Diego, CA 92122
Telephone: (858) 623-4200
Facsimile: (858) 623-4299

Attorneys for Plaintiff

CV 10 1460

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JL

SOUHEIL SAWAYA,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Civil Case No. _____

Filed as a Tag-Along Case to MDL
No. 06-1770 Assigned to the
Honorable Marilyn Hall Patel

COMPLAINT FOR:

- 1.) Violation of the Fair Labor Standards Act (29 U.S.C. §207);
- 2.) Violation of California Labor Code §§ 510 and 1194; and
- 3.) Violation of California Business and Professions Code §17200, *et seq.*

**I.
THE PARTIES**

1
2
3 1. The Plaintiff, Souheil Sawaya, is and at all times relevant has been a resident and
4 citizen of the State of California. From approximately 1997 through 2004, the Plaintiff was
5 employed by the Defendant Wells Fargo Bank, N.A. as a Home Mortgage Consultant ("HMC").
6 Plaintiff worked at the Defendant's offices located in Chula Vista, California and National City,
7 California.

8
9 2. The Defendant Wells Fargo Bank, N.A. is a business entity incorporated in a state
10 other than California and headquartered in San Francisco, California. The Defendant operates, as
11 a separate division, an entity headquartered outside the State of California which sells and
12 originates home mortgage loans. At all times relevant, the Defendant Wells Fargo Bank, N.A.
13 (hereinafter "Wells") employed the Plaintiff in the State of California as a Home Mortgage
14 Consultant to originate and produce mortgage loans.

15
16 3. Since February 11, 2005, the Plaintiff was a putative class member in an action
17 entitled *Mevorah v. Wells Fargo*, Case No. 3:05-cv-01175-MHP, which action subsequently
18 became a part of MDL Coordination Proceeding No. M:06-cv-01770-MHP. Class certification in
19 *Mevorah* was denied by the Honorable Marilyn Hall Patel on January 13, 2010. Plaintiff asserts
20 that during the pendency of the *Mevorah* action as a class suit, the statute of limitations was
21 tolled.

**II.
JURISDICTION AND VENUE**

22
23
24 4. The federal court has jurisdiction over this action pursuant to Title 28, U.S.C.
25 Section 1331 because a violation of the Fair Labor Standards Act (Title 29, U.S.C. Section 207) is
26 alleged. The federal court also has jurisdiction under Title 28, U.S.C. Section 1332 because the
27
28

1 10. The amount of overtime pay that the Defendant failed to pay Plaintiff is in excess
2 of \$75,000 under the California Labor Code.

3
4 **IV.**
5 **FIRST CAUSE OF ACTION**
6 **VIOLATION OF THE FAIR LABOR STANDARDS ACT**
7 **(Failure to Pay Overtime)**

8 11. Plaintiff re-alleges the preceding paragraphs of this complaint and hereby
9 incorporates them by reference.

10 12. The Defendant improperly and unlawfully treated the Plaintiff during his
11 employment between approximately 1997 through 2004 as a worker exempt from the protection
12 of the overtime laws and particularly the overtime protection provided by the Fair Labor
13 Standards Act, Title 29, U.S.C. Section 207. The Defendant failed to pay the Plaintiff overtime
14 wages as required and is therefore liable to him for all such sums including attorneys' fees and
15 costs. Because the Defendant's failure was willful in that it made no effort to monitor the actual
16 activities or hours worked, the Defendant is liable for liquidated damages or, alternatively, for
17 interest on the unpaid overtime wages.

18 **V.**
19 **SECOND CAUSE OF ACTION**
20 **VIOLATION OF THE CALIFORNIA LABOR CODE §§510 AND 1194**
21 **(Failure to Pay Overtime)**

22 13. Plaintiff re-alleges the preceding paragraphs of this complaint and hereby
23 incorporates them by reference.

24 14. Defendant's misclassification of the Plaintiff as overtime exempt between 1997
25 and 2004 was unlawful because it was in violation of the California Labor Code §§510 and 1194.
26 Defendant is therefore liable to the Plaintiff for overtime wages, interest thereon, costs, and
27 reasonable attorneys' fees.
28

VI.
THIRD CAUSE OF ACTION
VIOLATION OF THE UNFAIR BUSINESS PRACTICES ACT,
BUSINESS AND PROFESSIONS CODE §17200, *ET SEQ.*

15. Plaintiff re-alleges the preceding paragraphs of this complaint and hereby incorporates them by reference.

16. The Defendant's failure to pay overtime as mandated by the Fair Labor Standards Act and the Defendant's failure to pay overtime as required by the California Labor Code constituted unlawful and unfair business practices. These failures to pay overtime also constituted an attempt by the Defendant to gain unfair competitive advantage over other lenders because the Defendant misclassified all its Home Mortgage Consultants as overtime exempt and paid none of them the overtime or premium pay required under the law.

17. Accordingly, Defendant is liable to the Plaintiff for restitution of all overtime pay with interest thereon and costs.

PRAYER

Wherefore, the Plaintiff prays for the following relief:

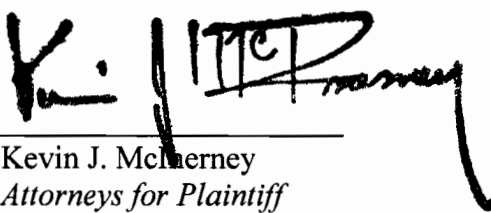
1. For overtime or premium pay as calculated under the Fair Labor Standards Act plus liquidated damages thereon or, alternatively, interest thereon;
2. For payment of overtime wages as calculated under the California Labor Code with interest thereon, costs, and reasonable attorneys' fees;
3. For restitution of all overtime wages due Plaintiff under the California Unfair Business Practices Act with interest thereon and costs; and

1 4. For such other and further relief as this Court may deem
2 appropriate.
3

4 Dated: April 5, 2010

Respectfully submitted,

5 MCINERNEY & JONES
6 DOSTART CLAPP GORDON & COVENEY LLP

7 
8 By: _____
9 Kevin J. McInerney
 Attorneys for Plaintiff